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 7 CONTRA COSTA COUNTY
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

13 C. ROBERT PETTIT, M.D.,
 14 Plaintiff,
 15 v.
 16 CONTRA COSTA MEDICAL SERVICES
 17 REGIONAL MEDICAL CENTER and
 18 DOES ONE THROUGH TWENTY,
 Inclusive,
 19 Defendants.

No. C 07 3358 JSW

DECLARATION OF DR. JEFFREY V.
 SMITH IN SUPPORT OF DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT
 OR PARTIAL SUMMARY JUDGMENT

20 I, Jeffrey V. Smith, do hereby declare:

21 1. I am over the age of eighteen and a resident of the State of California. I know of the
 22 matters set forth herein of my own personal knowledge, and if called upon to testify could and
 23 would competently testify thereto.

24 2. I have worked as a medical doctor with Contra Costa County since 1980. I have
 25 worked in the Health Services Department the entire time, first in Family Medicine, then in
 26 Surgery, and most recently in Administration. For the past four years, I have served as the
 27 chief executive officer for the hospitals and clinics. In that capacity, I am responsible for
 28 ensuring the entire hospital and clinic system operates according to regulatory requirements. I

1 also supervise the senior administrative team and am responsible for contracts, including those
2 for professional services from doctors, as well as personnel actions involving regularly-
3 salaried medical professional employees. I am responsible for entering into and terminating
4 contracts with physicians.

5 3. While County-employed physicians are represented by a union and the conditions of
6 their employment are determined by a Memorandum of Understanding, most of the County's
7 physician specialists are instead retained as independent contractors. Many of these specialists
8 serve less than forty hours per week for the County, and also serve at, and contract with, other
9 health care facilities, such as the Veterans' Administration. The County contracts with over 60
10 physicians on the basis of standard form contracts, much like the one used for Dr. Pettit. I
11 estimate that the County retains in excess of 50 doctors over the age of 40. A significant
12 portion of our contract specialist physicians are over 60 years of age.

13 4. The County and I actively recruit and contract with older and/or retired doctors. I
14 especially like to retain services of these older doctors because I find their years of experience
15 provide both expertise and good judgment in diagnosis and treatment. While younger/newer
16 doctors are quick to want to perform new and exciting (to them) procedures, the older doctors
17 have wisdom that comes from years of experience and do not, generally, feel pressured to
18 perform the latest, most intricate procedures. Older doctors are more comfortable taking a
19 wait-and-see approach in non-critical situations, another significant benefit of older, more
20 experienced doctors. The older doctors can be particularly skilled at responding to needs of
21 our large patient base of underserved Californians. We have what I refer to as a bread-and-
22 butter practice, one that involves a broad spectrum of routine treatments and surgeries for most
23 patients.

24 5. I recall meeting with Dr. Pettit before his contract was signed. He seemed
25 personable and bright and I thought he might be able to fit into our organization. I was also
26 intrigued by his professed experience with the medical board. Prior to being awarded a
27 contract, Dr. Pettit served as a *locum tenens* physician through a temporary agency that
28 provides doctors on short-term basis.

1 6. Attached as Exhibit 1 is a true and correct copy of the contract entered into by the
2 County and Dr. Pettit. He was to be paid \$312.50 per hour for otolaryngology work, as
3 specified under the contract. The Board of Supervisors approved the contract on their consent
4 calendar on January 25, 2005.

5 7. Dr. Pettit began work under the contract in February 2005. After he had been
6 serving only about six months, I had concerns about whether Dr. Pettit was a good fit for the
7 County system. Dr. Pettit appeared to be unsure of himself in the operating room.
8 Anesthesiologists were concerned about his ability to manage airways in the operating room.
9 He was reluctant to get involved in cancer cases, or other complex cases. Emergency Room
10 personnel expressed concerns about his responsiveness to calls from the ER. In addition, there
11 were difficulties with Dr. Pettit referring out to tertiary care centers patients who could
12 normally be handled better within our own system. Patients who might have limited access to
13 transportation were being asked by Dr. Pettit to report to U.C. San Francisco for evaluation,
14 and it was felt these patients could have been more easily treated here in Martinez. It appeared
15 Dr. Pettit preferred to refer patients to U.C.S.F. rather than treat them himself. Since it is not
16 unusual for new doctors to hit a few bumps in the road while learning how the County system
17 functions, I adopted a wait-and-see mode with respect to Dr. Pettit during 2005. And even in
18 early 2006, I was hopeful Dr. Pettit could assimilate into the organization

19 8. As 2006 progressed, I started getting more and more complaints about Dr. Pettit
20 from personnel in the operating room and in the clinics. One concern expressed was that Dr.
21 Pettit had some patients scheduled to return to see him time and time again when they did not
22 need to be seen in the ENT clinic. Thus, Dr. Pettit's clinic schedule was filled, in part, with
23 patients who did not require any treatment, a practice called "churning." Another concern was
24 that Dr. Pettit was unwilling to take on some of the more complex ENT cases, and instead
25 would "dump" these patients on other doctors, or refer them out to outside specialists. I spoke
26 with Dr. Pettit about this issue, and he told me he really wanted to focus on basic ENT care.
27 The County's system, however, can not permit this, since our system takes all comers. We
28 have a centralized appointment unit and physicians cannot pick and choose patients as they

1 might in private practice. We have, at best, three ENT specialists who must handle whatever
 2 medical challenges come through the door. The concerns of operating room staff and ER
 3 staff, outlined above, also continued. Pediatric staff expressed concerns about referring
 4 children to Dr. Pettit. These multitudes of concerns were expressed primarily not by Dr.
 5 Pettit's ENT physician colleagues, but by clinic administration and nursing staff, operating
 6 room nurses and ER staff. Because these issues with Dr. Pettit did not rise to the level of
 7 malpractice or poor medical care, I delayed terminating the contract until a time when the
 8 other ENT physicians in the unit stabilized the unit and could cover in Dr. Pettit's absence.

9 9. Based on the concerns raised by Health Services Department staff, as outlined
 10 above, by November of 2006, I spoke with Dr. Berguer, the head of surgery who oversaw the
 11 ENT unit, about the advisability of terminating Dr. Pettit's contract before its natural
 12 expiration. By early December 2006, I had put in motion the requisite paperwork for the
 13 Board of Supervisors to approve early termination of the contract.

14 10. As of the November-December 2006 time frame, I had never heard or learned of
 15 any complaints of regulatory violations or other "protected" activity by Dr. Pettit. I had heard
 16 about a disagreement between Dr. Pettit and Dr. Keating, and I understood that Dr. Berguer
 17 investigated the cross-allegations to his satisfaction. However, this dispute and the allegations
 18 (of which I had only a general understanding) were not factors in my decision to terminate the
 19 contract with Dr. Pettit.

20 11. On or before January 3, 2007, I caused to be drafted and signed, in the regular
 21 course of business, the standard termination of contract letter, addressed to Dr. Pettit at his
 22 address of record, a true and correct copy of which is attached hereto as Exhibit 2. In
 23 compliance with the terms of the contract (Ex. 1, p. L-4), the letter gave Dr. Pettit 60 days'
 24 notice; the designated effective date for the termination was March 3, 2007. It was, and is, my
 25 understanding that this letter was sent by U.S. Mail in the regular course of business by our
 26 Contracts and Grants Unit on January 3, 2007. Based on my review of the contract file for Dr.
 27 Pettit, kept in the regular course of the Health Services Department's Contracts and Grants
 28 Unit, however, the actual effective date of the termination was March 23, 2007, as reflected in

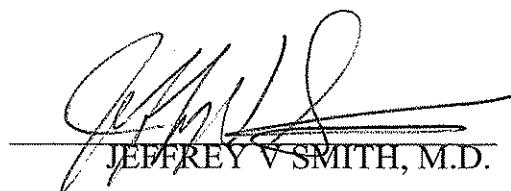
1 Exhibit 2-A in the middle of the page under the section headed "Term." Exhibit 2-A is a true
2 and correct copy of the contract request form for termination of Dr. Pettit's contract, as kept in
3 the regular course of business in the Contracts and Grants Unit.

4 12. At all time pertinent herein, the County and the Health Services Department have
5 had in place policies for preventing, as well as reporting, discrimination on any protected
6 basis, including age discrimination. Employees and managers are regularly trained on these
7 policies and on recognizing and preventing discrimination and harassment. In addition, the
8 Health Services Department provides special training for our management employees in
9 recognizing and preventing discrimination.

10 I declare under penalty of perjury under the laws of the United States and California
11 that the foregoing is true and correct and that this declaration was executed at Martinez,
12 California on the date set forth below.

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14 DATED: JULY 18 2008



JEFFREY V SMITH, M.D.

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EXHIBIT 1

1. **Contract Identification.**

Department: Health Services – Contra Costa Regional Medical Center
Subject: Provision of services in Contractor's specialty(ies)

2. **Parties.** The County of Contra Costa, California (County), for its Department named above, and the following named Contractor mutually agree and promise as follows:

Contractor: C. ROBERT PETTIT, M.D., INC.

Capacity: A Professional Corporation

Medical Specialty: Otolaryngology

Legal Address: 150 N. Gessner#14E, Houston, Texas 77024

Mailing Address: P.O. Box 4489, Carmel, California 93921

3. **Term.** The effective date of this Contract is February 1, 2005. It terminates on January 31, 2008 unless sooner terminated as provided herein.

4. **Payment Limit.** County's total payments to Contractor under this Contract shall not exceed \$ 1,117,000.

5. **County's Obligations.** County shall make to the Contractor those payments described in the Payment Provisions attached hereto which are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

6. **Contractor's Obligations.** Contractor shall provide those services and carry out that work described in the Service Plan attached hereto which is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

7. **General and Special Conditions.** This Contract is subject to the General Conditions and Special Conditions (if any) attached hereto, which are incorporated herein by reference.

8. **Project.** This Contract implements in whole or in part the following described Project, the application and approval documents of which are incorporated herein by reference: Not Applicable

9. Legal Authority. This Contract is entered into under and subject to the following legal authorities: California Government Code §§ 26227 and 31000; Health and Safety Code § 1451, and all legal authorities cited in the attached Health Plan Requirements, Attachment A and the HIPAA Business Associate Addendum, which are incorporated herein by reference.

10. Signatures. These signatures attest the parties' agreement hereto:

COUNTY OF CONTRA COSTA, CALIFORNIA

BOARD OF SUPERVISORS  By _____ Chairman/Designee	ATTEST: Clerk of the Board of Supervisors By _____ Deputy
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CONTRACTOR

Name of business entity N/A By _____ (Signature of individual or officer) <u>C. Robert Pettit, M.D., Inc., a Professional Corporation</u> (Print name and title A, if applicable)	Name of business entity XXXXXX By _____ (Signature of individual or officer) XXXXXX (Print name and title B, if applicable)
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Note to Contractor: For Corporations (profit or nonprofit), the contract must be signed by two officers. Signature A must be that of the president or vice-president and Signature B must be that of the secretary or assistant secretary (Civil Code Section 1190 and Corporations Code Section 313). All signatures must be acknowledged as set forth on form L2.

APPROVALS

RECOMMENDED BY DEPARTMENT

By:


Designee

Designee

FORM APPROVED
COUNTY COUNSEL

By: 3-7h

Deputy

APPROVED: COUNTY ADMINISTRATOR

By: Dorothy Janice
Designee

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF CONTRA COSTA)

On Sept. 7, 2005, before me, Barbara A. Borbon
(insert name and title of the officer), personally appeared C. Robert Pettit

____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL

Barbara A. Barker

Signature

**BARBARA A. BORBON
DEPUTY COUNTY CLERK
CONTRA COSTA COUNTY, CA**

(Seal)

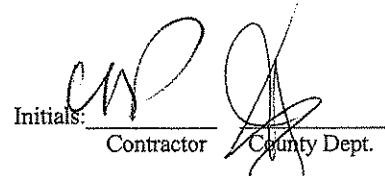
ACKNOWLEDGMENT (by Corporation, Partnership, or Individual)
(Civil Code §1189)

Contra Costa County
Standard Form P-1
Revised 2002

PAYMENT PROVISIONS
(Fee Basis Contracts - Long Form)

Number 26-509

1. **Payment Amounts.** Subject to the Payment Limit of this Contract and subject to the following Payment Provisions, County will pay Contractor the following fee as full compensation for all services, work, expenses or costs provided or incurred by Contractor: [Check one alternative only.]
 - [] a. \$_____ monthly,
 - [] b. \$_____ per unit, as defined in the Service Plan,
 - [] c. \$_____ after completion of all obligations and conditions herein, or
 - [X] d. (1) **\$1,250** per clinic defined as one four (4) hour Otolaryngology session, for not less than five (5) clinic sessions per week for 46 weeks a year, including, but not limited to, on-call, consultation, training and administration services and medical and/or surgical procedures.
 - (2) In the event that Contractor works less than a full clinic at Contra Costa Regional Medical Center and Contra Costa Health Centers, County shall prorate payments to the Contractor for that clinic at an hourly rate of **\$312.50**.
2. **Payment Demands.** Contractor shall submit written demands. Said demands shall be made on County Demand Form D-15 and in the manner and form prescribed by County. Contractor shall submit said demands for payment no later than 30 days from the end of the month in which the contract services upon which such demand is based were actually rendered. Upon approval of said payment demands by the head of the County Department for which this Contract is made, or his designee, County will make payments as specified in Paragraph 1. (Payment Amounts) above.
3. **Penalty for Late Submission.** When Contractor fails to submit to County a timely demand for payment as specified in Paragraph 2. (Payment Demands) above, and as a result of Contractor's late submission the County is unable to obtain reimbursement from the State of California or otherwise; to the extent the County's recovery of funding is prejudiced, County shall not pay Contractor for such services, even though such services were fully provided.
4. **Right to Withhold.** County has the right to withhold payment to the Contractor when, in the opinion of the County expressed in writing to the Contractor, (a) the Contractor's performance, in whole or in part, either has not been carried out or is insufficiently documented, (b) the Contractor has neglected, failed or refused to furnish information or to cooperate with any inspection, review or audit of its program, work or records, or (c) Contractor has failed to sufficiently itemize or document its demand(s) for payment.
5. **Audit Exceptions.** Contractor agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate County, State or Federal audit agencies occurring as a result of its performance of this Contract. Contractor also agrees to pay to the County within 30 days of demand by County the full amount of the County's obligation, if any, to the State and/or Federal government resulting from any audit exceptions, to the extent such are attributable to the Contractor's failure to perform properly any of its obligations under this Contract.


Initials: CW JK
Contractor County Dept.

Contra Costa County
Standard Form L-3
Revised 2002

SERVICE PLAN

Number 26-509

1. Contractor's Obligations.

- a. **Qualifications and Schedule.** Contractor hereby certifies and assures that he/she is specially trained, experienced, competent, and licensed to perform special professional services, including medical procedures and consultation and training in medical and therapeutic matters. Contractor shall render such special professional services in his/her medical specialty(ies) for County patients at certain times and locations specified by the Director of County's Health Services Department or his designee as stated in Attachment B to this Contract, which is incorporated herein by reference. Amendment of the provisions in Attachment B may be made in writing by mutual consent of the Contractor and the Health Services Director or his designee as set forth in General Conditions, Paragraph 8., (Modifications and Amendments).
- b. **Vacation Coverage.** Contractor shall notify the Health Services Director, or his designee, six (6) weeks in advance of any vacation. At the time of this notification, Contractor shall provide to the Health Services Director, or his designee, the names, addresses, and phone numbers of two physicians qualified to perform specialty services as provided hereunder by Contractor. Prior to supplying said names to County, Contractor shall have talked with these qualified physicians and determined their willingness to provide coverage at Contra Costa Regional Medical Center (CCRMC) during Contractor's vacation.
- c. **Training of Residents.** Contractor agrees to provide teaching and supervision of residents, as requested by the Health Services Director or his designee. This will be paid at the consultation and training services rate, specified in Payment Provisions, Paragraph 1. (Payment Amounts).
- d. **Patient Records.** Contractor will complete his/her patients' records and charts on a timely basis. County may withhold payment, recommend suspension or revocation of hospital privileges, and/or terminate this Contract for failure to comply with this contract provision.
- e. **Rules and Regulations.** Contractor agrees to abide by all rules, regulations, procedures and bylaws for the operation of the County's Health Services Department which he/she certifies he/she has read. Contractor also agrees to abide by the rules and regulations of the working unit in which he/she works as well as all legal requirements and Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards.
- f. **Contra Costa Health Plan Requirements.** Contractor shall be subject to the attached Contra Costa Health Plan Requirements (Attachment A) which are incorporated herein by reference.

2. **Administrative Responsibility.** Contra Costa Regional Medical Center and Contra Costa Health Centers (CCRMC) retain professional and administrative responsibility for the services rendered hereunder, but this provision shall have no effect on Special Conditions, Paragraph 1. (Insurance).

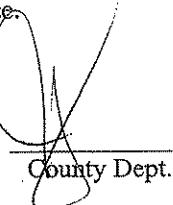
3. **Quality Assurance Requirements.** Contractor shall comply with the requirements and procedures set forth in the CCRMC Medical Staff By-Laws, including but not limited to those procedures governing the peer review process.

4. **Assignment Of Fees And Insurance Benefits.** Contractor hereby assigns to County any and all fees and insurance benefits due and payable for medical services rendered by Contractor pursuant to this Contract. Contractor is hereby precluded from billing patients, insurers, or other third party(ies) for medical services rendered by Contractor pursuant to this Contract.

5. **On-Call Coverage Services.** In addition to the actual medical specialty services (i.e., consultation, training, and medical and/or surgical procedures) that are provided by Contractor at the times and locations specified by the Director of County's Health Services Department, Contractor shall also provide "on-call" coverage services, as set forth in Attachment B, which is incorporated herein by this reference, and in accordance with Contractor's schedule on file which is in the office of the Medical Staff Secretary.

6. **HIPAA Requirements.** Contractor must comply with the applicable requirements and procedures established by the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and any modifications thereof, including but not limited to, the attached HIPAA Business Associate Addendum, which is incorporated herein by reference.

Initials: CP
Contractor


County Dept.

SPECIAL CONDITIONSNumber 26-509

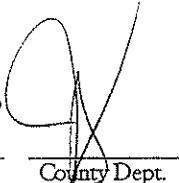
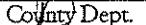
1. **Insurance.** Notwithstanding Paragraph 14 (Independent Contractor Status) and Paragraph 18 (Indemnification) of the General Conditions, Paragraph 19 (Insurance) of the General Conditions is hereby deleted in its entirety and replaced with the following Paragraph to read as follows:

"Immunity, Insurance, and Indemnification. In performing medical services for County, Contractor shall be regarded as an employee of the County only for purposes of the Tort Claims Act (Gov. Code, §§ 825 et seq.) and protected by the same immunities and right to indemnification extended by that Act to public employees. This provision is not intended by the parties to change the independent Contractor Status of the Contractor."

2. **Modification to Termination and Cancellation.** Paragraph 5. of the General Conditions (Termination and Cancellation) is hereby deleted in its entirety and replaced with a new Paragraph to read as follows:

"5. Termination and Cancellation.

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon sixty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
- b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance shall be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.
- c. **Cessation of Funding.** Notwithstanding Paragraph 5.a. above, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice."

Initials: JP 
Contractor 
County Dept.

ATTACHMENT A

CONTRA COSTA HEALTH PLAN REQUIREMENTSNumber: 26-509

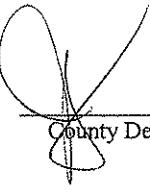
These Contra Costa Health Plan Requirements are in addition to any and all other terms provided in the Contract referenced by number above. If any provision of these Contra Costa Health Plan Requirements conflicts with any of the terms provided in this Contract, then these Contra Costa Health Plan Requirements shall prevail.

Pursuant to State Department of Health/County Contract #96-26103 (County #29-772), effective October 1, 1995, (or the latest revision); requirements of the Waxman-Duffy Prepaid Health Plan Act, (1972) and Knox-Keene Health Care Service Plan Act of 1975; Health and Safety Code § 1340 et seq.; Welfare and Institutions Code, § 14200 et seq.; Title 22, CCR, § 53250, et seq. and Title 28, CCR, § 1300.43, et seq., the following requirements are incorporated into the contract referenced by number above.

1. Contractor shall be subject to and comply with all Federal, State, and local laws and regulations and contractual obligations incumbent upon the County under County Contract #29-772 and any subsequent amendment thereto.
2. A Contractor providing any basic health care service to Contra Costa Health Plan members (Plan members) shall meet all of the requirements of Chapters 3 and 4, Subdivision 1, Division 3, Title 22, CCR, (commencing with § 51000) which relate to the services the Contractor provides.
3. Contracts shall be public records on file with the State Department of Health Services. The names of the officers and owners of the Contractor, stockholders owning more than ten percent of the stock issued by the Contractor, and major creditors holding more than five percent of the debt of the Contractor are:

Owners/Officers:Stockholders owning more than 10% of stock:Creditors holding more than 5% of debt:

4. County and Contractor agree that Contractor's compensation hereunder shall not be based in any way on a percentage of the County's compensation from the State Department of Health Services; this agreement does not preclude the establishment of Contractor's rate based pursuant to Welfare and Institutions Code § 14453.
5. Contractor agrees to submit reports or abstracts of treatment record in relation to Plan members, as appropriate and required by County.

Initials: CP 
Contractor 
County Dept.

ATTACHMENT A

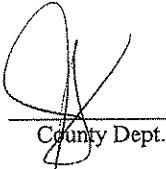
CONTRA COSTA HEALTH PLAN REQUIREMENTS

6. In addition to the requirements of the General Conditions, Paragraph 3. (Records).
 - a. **Availability of Records.** Contractor will allow inspection, examination, or copying of all books and records including, but not limited to, working papers, reports, financial records, medical records, encounter data, medical charts and other documentation pertaining to services rendered to Plan members, by the County, the State Department of Health Services, the State Department of Managed Health Care, the State Department of Corporations, the U.S. Department of Health and Human Services, the U.S. Department of Justice, or their duly authorized representatives. Such books and records shall be made available at all reasonable times at the Contractor's place of business, for a term of at least five years from the close of State's fiscal year in which this Contract is in effect. Upon request, and subject to legally-required patient consents, Contractor shall provide copies of Plan member's medical records to the County and Plan member's other treating physicians. County will reimburse Contractor for the cost of copying Plan member's medical records, which are requested by County.
 - b. **Maintenance of Records.** Contractor shall maintain clear and complete books and records which reflect all services rendered to Plan members, in accordance with all statutory and regulatory requirements applicable to such books and records. Contractor shall further maintain records of the costs of services provided to Plan members and all co-payments or other payments received by Contractor from Plan members or others on their behalf. Contractor shall maintain and submit encounter data in the time, form and manner required by the County and the State Department of Health Services.
 - c. All Contractor's subcontracts must be in writing. Upon request of the County, the State Department of Health Services, the State Department of Managed Health Care, the State Department of Corporations, the U.S. Department of Health and Human Services, the U.S. Department of Justice, or their duly authorized representatives, Contractor will make all books and records pertaining to its subcontractors available for inspection, examination, or copying. Contractor will retain all books and records pertaining to a subcontractor for at least five years from the close of the fiscal year in which the sub-subcontract is in effect.
7. General Conditions Paragraph 13. (Subcontract and Assignment) is hereby modified by the addition of this provision, to read as follows:
 "Contractor shall not make assignment and/or delegation of this Contract unless it has obtained prior written approval of the other party, the County, and State Department of Health Services"
8. Contractor will hold harmless both the State and Plan members in the event the County cannot or will not pay for services performed for Plan members pursuant to this Contract.
9. Contractor will notify the Department of Health Services and Director of the Department of Managed Health Care in the event this Contract is amended or terminated. Notice is considered given when deposited in the U.S. Registered Mail, first class postage prepaid, addressed as follows:

Organized Health Services HMO Unit
 Department of Health Services
 714 P Street
 Sacramento, California 95814

State Department of Managed Health Care
 980 9th Street, Suite 500
 Sacramento, California 95814

Initials: CAF
 Contractor


 County Dept.

ATTACHMENT A

CONTRA COSTA HEALTH PLAN REQUIREMENTS10. Nondiscrimination Requirements.a. Nondiscrimination Clause.

(1) During the performance of this Contract, Contractor and its subcontractors will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including Cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, § 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0 et seq.). The applicable regulations of the Department of Fair Employment and Housing implementing Government Code, § 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(2) This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

b. Nondiscriminatory Services. The Contractor will not discriminate against Contra Costa Health Plan members, subscribers or eligible beneficiaries because of race, color, creed, religion, ancestry, marital status, sexual orientation, national origin, age, sex, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964, 42 USC § 2000d, and rules and regulations promulgated pursuant thereto, or as otherwise provided by law or regulation.

c. Discrimination Complaints. The Contractor agrees that copies of all grievances alleging discrimination against Contra Costa Health Plan members or eligible beneficiaries because of race, color, creed, sex, religion, age, national origin, ancestry, marital status, sexual orientation, or physical or mental handicap shall be forwarded to the Health Services Director for review and appropriate action.

11. Surcharges. Contractor shall provide all covered services to Plan members under this Contract, or any amendment thereof, with no surcharge to any Plan member.

12. Turnover and Phaseout Period.

a. At the expiration or termination of this Contract, Contractor shall assist County in the Turnover Period, as required by the State Department of Health Services, in such a manner that the continuity of access and quality of care to Plan members is maintained. The Turnover period consists of the orderly transfer of Plan member's medical care including, but not limited to, the transfer of medical records, patient files, and any other pertinent information necessary for efficient case management of Plan members to the State Department of Health Services or to the successor Contractor.

Initials: CCP
Contractor

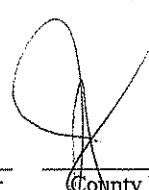
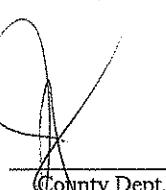
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County Dept.

ATTACHMENT A

CONTRA COSTA HEALTH PLAN REQUIREMENTS

- b. At the completion of the Turnover Period, Contractor shall assist County in the Phasesout Period, as required by the State Department of Health Services, which will ensure that County has completed all remaining contractual obligations under this Contract. County will remain liable for covered services provided to Plan members by the Contractor until the services being rendered are completed or County makes reasonable and medically appropriate provisions for the transfer of such services.
- 13. **Payment of Claims.** County will timely pay Contractor claims within forty-five (45) working days after receipt. Notice must be provided to Contractor in the case of contested claims within forty-five (45) working days after receipt. County will have sufficient claims processing/payment systems to timely process and pay Contractor and to reasonably determine the status of received claims and calculate provisions for incurred but not reported claims as required under Title 28, CCR, §§ 1300.77.1 and 1300.77.2.
- 14. **Third Party Tort Liability.** County and Contractor will not make any claim for recovery of the value of covered services rendered to a Plan member when such recovery would result from an action involving the tort liability of a third party or casualty liability insurance including Workers' Compensation awards and uninsured motorists coverage. County and Contractor will identify and notify State Department of Health Services of cases in which an action by the Plan member involving the tort or Worker' Compensation liability of a third party could result in recovery by the Plan member of funds to which the State Department of Health Services has lien rights under Article 3.5 (commencing with § 14124.70), Part 3, Division 9, Welfare and Institutions Code. Such cases will be referred to the State Department of Health Services within 10 days of discovery.
- 15. **Assumption of Risk.** County assumes the total risk of providing covered services for each Plan member as specified in Title 22, § 53251 (a), (c), (d), and (e), except as otherwise allowed in Contract #29-772 with the State Department of Health Services and any subsequent amendment thereto, and accordingly noted in this Contract.
- 16. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final determination in writing by the head of the County Department for which this Contract is made, or his/her designee, or in accordance with the applicable procedures (if any) required by the State or Federal Government. A dispute can be forwarded to the Contra Costa Health Plan Deputy Director [(925) 313-6008] in written form forwarded via U.S. mail, private courier, or in person to:

Contra Costa Health Plan
 c/o Deputy Director
 595 Center Avenue, Suite 100
 Martinez, California 94553

Initials: CP 
 Contractor 
 County Dept.

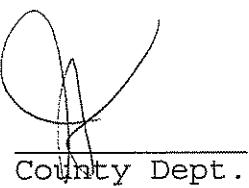
ATTACHMENT B

Contract Number: 26-509

Contractor: C. ROBERT PETTIT, M.D., INC.

1. Services: Contractor shall provide Otolaryngology services including clinic consultation, teaching, administration, on-call, and medical and/or surgical procedures, as requested by County.
2. Schedule: Contractor's schedule shall be on file in the office of the Medical Staff Secretary.

Initials: CR 
Contractor


County Dept.

HIPAA BUSINESS ASSOCIATE ADDENDUM

To the extent, and as long as, required by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder (hereinafter referred to as "HIPAA"), this HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Contract identified as Number 26-509 (hereinafter referred to as "Agreement") by and between a Covered Entity (Contra Costa County for its Health Services Department, hereinafter referred to as "County") and Business Associate (the Contractor identified in the Agreement, hereinafter referred to as "Associate"), and is effective as of April 14, 2003 (the "Addendum Effective Date").

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. **Definitions.** As used in this Addendum, the following terms have the following meanings:
 - a. **Business Associate** ("Associate") means an individual or entity which provides services, arranges, performs or assists in the performance of activities on behalf of the County and who uses or discloses PHI, pursuant to the HIPAA Regulations including, but not limited to, 45 CFR Section 160.103.
 - b. **Covered Entity** ("County") shall mean Contra Costa County for its Health Services Department.
 - c. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule including, but not limited to, 45 CFR Section 164.501.
 - d. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule including, but not limited to, 45 CFR Section 164.501.
 - e. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule including, but not limited to, 45 CFR Section 164.501.
 - f. **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Parts 160 and 164, as in effect or as amended.
 - g. **Protected Health Information** ("PHI") means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule including, but not limited to, 45 CFR Section 164.501.
 - h. **Protected Information** shall mean PHI provided by County to Associate or created or received by Associate on behalf of the County.
 - i. **Required by Law** shall have the same meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR 164.501.

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy Rule.

2. **Obligations of Associate.**

- a. **Permitted Uses.** Associate agrees not to use Protected Information except for the purpose of performing Associate's obligations under the Agreement and as permitted under the Agreement and this Addendum, or as Required by Law.

Initials: EP 
 Contractor _____
 County Dept. _____

- b. **Permitted Disclosures.** Associate agrees not to disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by County, except that Associate may disclose Protected Information (i) in a manner permitted pursuant to the Agreement and Addendum, (ii) for the proper management and administration of Associate, (iii) as Required by Law, or (iv) for Data Aggregation purposes for the Health Care Operations of County. To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement from such third party to immediately notify Associate or any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach.
- c. **Appropriate Safeguards.** Associate agrees to use appropriate administrative, technical and physical safeguards to prevent the use or disclosure of Protected Information other than as provided for by the Agreement or this Addendum.
- d. **Reporting of Improper Use or Disclosure.** Associate shall notify County in writing within five (5) working days of its discovery of any use or disclosure of Protected Information not permitted by the Agreement or this Addendum of which Associate or its officers, employees or agents become aware. Associate shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable laws and regulations.
- e. **Associate's Agents.** Associate agrees to ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate agrees to implement and maintain sanctions against agents and subcontractors that violate such restrictions and shall mitigate the effects of any such violation.
- f. **Access to Protected Information.** Associate agrees to make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to County for inspection and copying within ten (10) days of request by County to enable County to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524.
- g. **Amendment of Protected Information.** Within ten (10) days of receipt of a request from County for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to County for amendment and incorporate any such amendment to enable County to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify County within five (5) calendar days of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or subcontractors will be the responsibility of County.
- h. **Availability and Accounting of Information.** Within ten (10) calendar days of notice by County of a request for an accounting of disclosure of Protected Information, Associate and its agents or subcontractors shall make available to County the information required to provide an accounting of disclosures to enable County to fulfill its obligations under the Privacy Rule including, but not limited to, 45 CFR Section 164.528. As set forth in, and as limited by, 45 CFR Section 164.528, Associate need not provide an accounting to County of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR Section 164.502; (ii) to individuals of PHI about them as set forth in 45 CFR 164.502; (iii) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR Section 164.510; (iv) for national security or intelligence purposes as set forth in 45 CFR Section 164.512(k)(2); or (v) to correctional institutions or law enforcement officials as set forth in 45 CFR Section 164.512(k)(5). Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate (and its agents or

Initials: 

Contractor

County Dept.

subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) calendar days of a request forward it to County in writing. It will be County's responsibility to prepare and deliver such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2.b. of this Addendum.

- i. **Governmental Access to Records.** Associate agrees to make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining County's compliance with the Privacy Rule. Associate agrees to provide to County a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- j. **Minimum Necessary.** Associate (and its agents and subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure.
- k. **Data Ownership.** Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.
- l. **Retention of Protected Information.** Except as provided in Section 3.c. of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of the Agreement and shall continue to maintain the information required under Section 2.h. of this Addendum for a period of six (6) years after termination of the agreement.
- m. **Associate's Insurance.** In addition to any other insurance requirements specified in the Agreement, Associate shall, at its sole cost and expense, insure its activities in connection with this Addendum. Associate shall obtain, keep in force and maintain insurance or equivalent program(s) of self-insurance with appropriate limits, as determined by County at its sole discretion, that shall cover losses that may arise from breach of this Addendum, breach of security, or any unauthorized use or disclosure of Protected Information. It should be expressly understood, however, that the insurance required herein shall in no way limit the liability of Associate with respect to its activities in connection with this Addendum.
- n. **Indemnification.** Associate agrees to indemnify and hold harmless County, its officers, agents and employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses, (including costs and reasonable attorney fees) or claims for injury or damages that are caused by or result from the acts or omissions of Associate, its officers, agents or employees with respect to the use and disclosure of Protected Information. This section shall survive cancellation or termination of the Agreement.
- o. **Inspection of Records.** Within ten (10) days of a written request by County, Associate agrees to make available to County during normal business hours all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Information for purposes of enabling County to determine Associate's compliance with the terms of this Addendum. County agrees to protect the confidentiality of confidential and proprietary information of Associate to which County has access during the course of such inspection. The fact that County inspects, or fails to inspect, or has the right to inspect, Associate's records, books, agreements, policies and procedures does not relieve Associate of its obligations pursuant to this Addendum, nor does County's (i) failure to detect or (ii) detection, but failure to notify Associate or require

Initials: CAB _____
 Contractor _____
 County Dept. _____

Associate's remediation of any unsatisfactory practice, constitute acceptance of such practice or a waiver of County's enforcement rights under this Addendum.

- p. **Certification.** County and its authorized agents or contractors, may examine Associate's facilities, systems, procedures and records as may be necessary to determine the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations and this Addendum.
- q. **Choice of Law and Personal Jurisdiction.** This Addendum is made in Contra Costa County and shall be governed and construed in accordance with the laws of the State of California. Any action relating to this Addendum shall be instituted and prosecuted in the courts of Contra Costa County, State of California.
- r. **Entire Agreement.** The Agreement, including this Addendum, contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of the Agreement, including this Addendum, shall be deemed to exist or to bind any of the parties hereto.

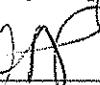
3. **Termination.**

- a. **Material Breach.** A breach by Associate of any material provision of this Addendum, as determined by County, shall constitute a material breach of the Agreement, and shall provide grounds for termination of the Agreement by County pursuant to General Conditions Paragraph 5 (Termination) of the Agreement.
- b. **Reasonable Steps to Cure Breach.** If County knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate the Agreement pursuant to Section 3a, then County will provide Associate an opportunity to cure such breach or end such violation, as applicable. If Associate's efforts to cure such breach or end such violation are unsuccessful, County shall either (i) terminate the Agreement, if feasible or (ii) if termination of the Agreement is not feasible, County will report Associate's breach or violation to the Secretary of the Department of Health and Human Services.
- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Associate shall return or, at the option of County, destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Associate shall continue to extend the protections of Sections 2a., 2b., 2c., and 2d. of this Addendum to such information and limit further use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible. If Associate destroys the Protected Information, Associate shall certify in writing to County that such Protected Information has been destroyed.

4. **Disclaimer.** County makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

5. **Changes to the Addendum.**

- a. **Compliance with Law.** The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that changes to this Addendum may be required to ensure compliance with such developments. The parties agree to take such action as may be necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable state and federal laws relating to the security or confidentiality of PHI.
- b. **Negotiations.** In the event that a state or federal law, statute, or regulation materially affects the Agreement or this Addendum, the parties agree to negotiate immediately in good faith any necessary or appropriate revisions

Initials: 

Contractor

County Dept.

to the Agreement or this Addendum. If the parties are unable to reach an agreement concerning such revisions within the earlier of thirty (30) calendar days after the date of notice seeking negotiations or the effective date of a change in law or regulations, or if the change is effective immediately, then County may, in its sole discretion, immediately terminate the Agreement upon written notice to Associate.

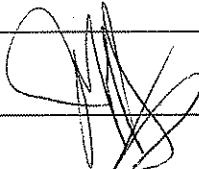
6. **Miscellaneous Provisions.**

- a. **Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agent assisting Associate in the performance of its obligations under the Agreement, available to County, at no cost to County, to testify as witnesses or otherwise, in the event of litigation or administrative proceedings against County, its officers or employees based upon a claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy and arising out of the Agreement or this Addendum.
- b. **No Third Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than County, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- c. **Effect on Agreement.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in full force and effect.
- d. **Interpretation.** The provision of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision of this Addendum. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.
- e. **Notice to Secretary.** If County knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of Associate's obligations under this Addendum, if the breach or violation continues, and if termination of the Agreement is not feasible, County is required by the HIPAA regulations to report the problem to the Secretary of Health and Human Services.
- f. **Survival.** The obligations of Associate under Section 3.c. (Effect of Termination) of this Addendum shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

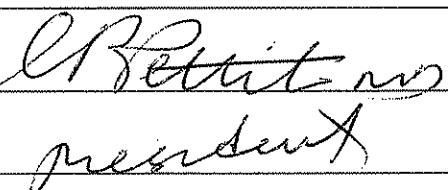
Contra Costa County

Associate

By: 

Title: _____

Date: _____

By: 

Title: _____

Date: _____

[Form Approved by County Counsel]

**GENERAL CONDITIONS
(Purchase of Services - Long Form)**

1. **Compliance with Law.** Contractor shall be subject to and comply with all applicable federal, state and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment and purchasing practices; and wages, hours and conditions of employment, including nondiscrimination.

2. **Inspection.** Contractor's performance, place of business and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the County, the State of California, and the United States Government.

3. **Records.** Contractor shall keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the County.

a. **Retention of Records.** Contractor shall retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this contract's funding period. Upon request, Contractor shall make these records available to authorized representatives of the County, the State of California, and the United States Government.

b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor shall, upon written request and until the expiration of four years after the furnishing of services pursuant to this Contract, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that upon written request and until the expiration of four years after the furnishing of services pursuant to such subcontract, the subcontractor shall make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This special condition is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor shall include in all documents or written reports completed and submitted to County in accordance with this Contract, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section shall apply only if the payment limit under this Contract exceeds \$5,000.

5. **Termination and Cancellation.**

a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.

b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance shall be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.

c. **Cessation of Funding.** Notwithstanding Paragraph 5.a. above, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice.

6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be developed and set forth in a written Informal Agreement between Contractor and County. Informal Agreements shall be designated as such and shall not be amendments to this Contract except to the extent that they further detail or clarify that which is already required hereunder. Informal Agreements may not enlarge in any manner the scope of this Contract, including any sums of money to be paid Contractor as provided herein. Informal Agreements may be approved and signed by the head of the county department for which this Contract is made or its designee.

8. **Modifications and Amendments.**

- a. **General Amendments.** This Contract may be modified or amended by a written document executed by Contractor and the Contra Costa County Board of Supervisors or, after Board approval, by its designee, subject to any required state or federal approval.
- b. **Administrative Amendments.** Subject to the Payment Limit, the Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the County Administrator (or designee), subject to any required state or federal approval, provided that such administrative amendment may not materially change the Payment Provisions or the Service Plan.

9. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the head of the county department for which this Contract is made, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.

10. **Choice of Law and Personal Jurisdiction.**

- a. This Contract is made in Contra Costa County and shall be governed and construed in accordance with the laws of the State of California.
- b. Any action relating to this Contract shall be instituted and prosecuted in the courts of Contra Costa County, State of California.

11. **Conformance with Federal and State Regulations and Laws.** Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract shall be deemed amended to assure conformance with such federal or state requirements.

12. **No Waiver by County.** Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of County indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, shall not relieve Contractor's obligation to fulfill this Contract as prescribed; nor shall the County be thereby estopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.

13. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

14. **Independent Contractor Status.** This Contract is by and between two independent contractors and is not intended to and shall not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture or association.

15. **Conflicts of Interest.** Contractor, its officers, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by this Contract to influence any governmental decision in which they know or have reason to know they have a financial interest under California Government Code Sections 87100, et seq., or otherwise.

16. **Confidentiality.** Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that:

- a. All applications and records concerning any individual made or kept by Contractor or any public officer or agency in connection with the administration of or relating to services provided under this Contract will be confidential, and will not be open to examination for any purpose not directly connected with the administration of such service.
- b. No person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services.** Contractor agrees that all goods and services under this Contract shall be available to all qualified persons regardless of age, sex, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none shall be used, in whole or in part, for religious worship or instruction.
18. **Indemnification.** Contractor shall defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, costs and liability for any damages, sickness, death, or injury to person(s) or property, including without limitation all consequential damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of Contractor or its agents, servants, employees or subcontractors hereunder, save and except claims or litigation arising through the sole negligence or sole willful misconduct of County or its officers or employees. Contractor will reimburse County for any expenditures, including reasonable attorneys' fees, County may make by reason of the matters that are the subject of this indemnification, and, if requested by County, will defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of Contractor.
19. **Insurance.** During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:
 - a. **Liability Insurance.** For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor shall provide comprehensive liability insurance, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance shall be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this agreement. Said policies shall constitute primary insurance as to County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by them or their self-insurance program(s) shall not be required to contribute to any loss covered under Contractor's insurance policy or policies. For all contracts where the total payment limit is above \$500,000, the aforementioned insurance coverage to be provided by Contractor shall have a minimum combined single limit coverage of \$1,000,000, and Contractor shall be required to provide County with a copy of the endorsement making the County an additional insured on all general liability, worker's compensation, and, if applicable, all professional liability insurance policies as required herein no later than the effective date of this Contract.
 - b. **Workers' Compensation.** Contractor shall provide workers' compensation insurance coverage for its employees.
 - c. **Certificate of Insurance.** The Contractor shall provide the County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If the Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor shall provide (a) current certificate(s) of insurance.
 - d. **Additional Insurance Provisions.** The insurance policies provided by Contractor shall include a provision for thirty (30) days written notice to County before cancellation or material change of the above specified coverage.
20. **Notices.** All notices provided for by this Contract shall be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County shall be addressed to the head of the county department for which this Contract is made. Notices to Contractor shall be addressed to the Contractor's address designated herein. The effective date of notice shall be the date of deposit in the mails or of other delivery, except that the effective date of notice to County shall be the date of receipt by the head of the county department for which this Contract is made.

21. **Primacy of General Conditions.** Except for Special Conditions which expressly supersede General Conditions, the Special Conditions (if any) and Service Plan do not limit any term of the General Conditions.

22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by County under a new contract following expiration or termination of this Contract, and waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.

23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.

24. **No Third-Party Beneficiaries.** Notwithstanding mutual recognition that services under this Contract may provide some aid or assistance to members of the County's population, it is not the intention of either County or Contractor that such individuals occupy the position of intended third-party beneficiaries of the obligations assumed by either party to this Contract.

25. **Copyrights and Rights in Data.** Contractor shall not publish or transfer any materials produced or resulting from activities supported by this agreement without the express written consent of the County Administrator. If any material is subject to copyright, County reserves the right to copyright, and Contractor agrees not to copyright, such material. If the material is copyrighted, County reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so.

26. **Endorsements.** Contractor shall not in its capacity as a contractor with Contra Costa County publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of the Board of Supervisors. In its County contractor capacity, Contractor shall not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior approval of the Board of Supervisors. In its County contractor capacity, Contractor shall not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.

27. **Required Audit.** (A) If Contractor is funded by \$300,000 or more in federal grant funds in any fiscal year from any source, Contractor shall provide to County at Contractor's expense an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. (B) If Contractor is funded by less than \$300,000 in federal grant funds in any fiscal year from any source, but such grant imposes specific audit requirements; Contractor shall provide to County an audit conforming to those requirements. (C) If Contractor is funded by less than \$300,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year, however, Contractor's records must be available for and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the County. If any such audit is required, Contractor shall provide County with such audit. With respect to the audits specified in (A), (B) and (C) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the contract amount, whichever is larger, or the final payment, from Contractor until County receives the audit from Contractor.

28. **Authorization.** Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and perform the obligations herein.

EXHIBIT 2

WILLIAM B. WALKER, M.D.
HEALTH SERVICES DIRECTOR

JEFFREY V. SMITH, M.D.
EXECUTIVE DIRECTOR
MEDICAL CENTER
HEALTH CENTERS

STEVEN C. TREMAIN, M.D.
DIRECTOR, OFFICE OF AMBULATORY CARE
SENIOR MEDICAL DIRECTOR



CONTRA COSTA
 REGIONAL
 MEDICAL CENTER
 CONTRA COSTA
 HEALTH CENTERS

2500 Alhambra Avenue
 Martinez, California 94553-3191
 Ph (925) 370-5000

January 3, 2007

C. Robert Pettit, M.D., Inc.
 118 Costanza
 Martinez, CA 94553

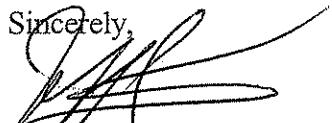
Dear Dr. Pettit:

**Termination Notice
 Contract Number #26-509-1**

The purpose of this letter is to notify you that the County's contract with you Contract #26-509, for the provision of Otolaryngology services, is being terminated.

Therefore, this letter provides you with sixty (60) days formal advance written notice that Contract #26-509, is hereby terminated effective close of business on March 3, 2007, in accordance with Special Conditions, Paragraph 2. (Modification to Termination and Cancellation) of the Contract. Please direct your questions regarding the termination of contract services to me at (925) 370-5113.

Sincerely,


 Jeff Smith, M.D., Executive Director
 Contra Costa Regional Medical Center

JS:jp:ts

cc: Auditor-Controller (Accounts Payable)
 Hospital Admin.
 Renee Galvez
 Contracts and Grants Unit



EXHIBIT 2-A



Contra Costa Health Services Contract Request

Contract: 26509-1

TS

Request

Date of Request	12/14/06	Requestor	Marcelle Indelicato	Description	ENT PHYSICIAN
Division	CCRMC and Health Centers				
Request Type	Terminate Contract	For Contract # 26509			
Monitoring	JEFF SMITH	Phone	3705113		
		Service plan attached	No attachments		

Contractor PETTIT, ROBERT C. M.D.

Doing Bus. As			Contact	SAME
Legal Address	118 COSTANZA	MARTINEZ	CA	94553
Mailing Address	118 COSTANZA	MARTINEZ	CA	94553
		Legal Status A PROFESSIONAL CORPORATION		
		HIPAA Business Associate Yes		

Woman owned business	No	State certified business	No	Certification expires
Minority owned business	No	Local business	Yes	
Disabled veterans business	No	Sole-source provider	No	
Disadvantaged business	No	Other business	No	
Small business	Yes	Exempt business (nonprofit, Contractor subject to withholding)		No

For direct service provider:

Has Medicare/Medi-Cal Provider number been obtained	Yes
Has Medi-Cal certification been received	Yes
Has providers State license been reviewed	Yes

Term Effective 2/1/05 Terminate 1/31/08 Effective date of termination 03/23/2007

Payment Limit				
Contract Payment Limit	\$1,117,000.00	Amended Contract Payment Limit	\$0.00	
Automatic Extension Amount	\$0.00	Expenses	\$0.00	
For Contractors Subject to withholding:				
County paid payroll taxes:	\$1,117,000.00	Payment Limit Less Expenses		
FICA	\$0.00	(6.2% X Max of current OASDI amount)		
Medicare	\$0.00	(1.45% X payment limit)		
Workers' Comp	\$0.00	(4.5% X payment limit)		
Unemployment	\$0.00	(0.2% X payment limit)		
Expenses	\$0.00			
Total Cost to County	\$1,117,000.00			

Payment Method	Fee Basis				
Funding Source		Grant #	Fiscal Year	Amount	Percent
Federal Program Name		0		\$0.00	0
State Program Name		0		\$0.00	0
County Program Name		0		1,117,000.00	0
Other Program Name		0		\$0.00	0
	Total			\$1,117,000.00	
Funding in current budget	No	Appropriation Adjustment needed	No	Requires Personnel Action	No

Justification For This Contract

THIS IS NOT A MUTUAL CANCELATION. PLEASE TERMINATE 60 DAYS FROM THE BOS APPROVAL DATE.